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UNITED STATES DISTRICT COURT  
  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
  
HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE  
  
SANTA CLARITA VALLEY WATER AGENCY, )  
 )  
Plaintiff, )  
 )  
v. ) Case No.  
 ) CV 18-6825 SB (RAOx)  
WHITTAKER CORPORATION, et al., )  
 ) Volume 21  
Defendants. ) (Pages 2214 - 2248)  
 )

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REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 11  
FRIDAY, DECEMBER 3, 2021  
12:38 P.M.  
LOS ANGELES, CALIFORNIA

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1 FRIDAY, DECEMBER 3, 2021; 12:38 P.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 (Out of the presence of the jury:)

12:38PM 5 THE COURT: On the record in Santa Clarita Valley  
6 Water Agency versus Whittaker. We are in the presence of  
7 counsel. We have Mr. Blum for Whittaker.

8 And I'll allow you to announce your team,  
9 Mr. Richard.

12:38PM 10 MR. RICHARD: Thank you, Your Honor.  
11 Patrick Richard for the plaintiff. And with me is Ms. Scott,  
12 Mr. Gee, and Ms. McGuane.

13 THE COURT: The Court received a question from the  
14 jury, and the jury has noted that there are three missing  
12:39PM 15 numbers from the special verdict form. So the negligence  
16 per se was removed and the numbering had not changed.

17 And that doesn't raise that much of an issue. But  
18 the Court then took another look at the verdict form, and it  
19 does appear to the Court that there are some additional  
12:39PM 20 potential problems with it. And my intention is simply to tell  
21 you what I have identified as potential issues with the special  
22 verdict form. And then I'm going to have my courtroom deputy  
23 provide to you copies of a redlined version that attempts to  
24 address the potential issues.

12:40PM 25 I will then break to give you some time to carefully

1 reflect upon it. And I would strongly urge you to give it your  
2 careful attention. And if you could have more than one person  
3 on your team look at it, so much the better.

12:40PM 4 This is going to be, in my view, a little bit  
5 convoluted in how to properly render the damages portion to the  
6 verdict -- to the jury.

7 So let me start with the change which is in  
8 numbering. And you will see that there are no changes until  
9 you get to damages. And on damages -- and this would be on --  
12:41PM 10 let me see here. Unfortunately, this doesn't have pagination.  
11 Well, you will have the damages section before you.

12 And the damages section would start 21 and then just  
13 the numbering would be consecutive thereafter.

14 And so one of the potential benefits of what I think  
12:41PM 15 is otherwise a problem with the special verdict form is that  
16 you'll see the jury will get to damages no matter what. That  
17 is, if you look at each of the four claims, even if they answer  
18 in favor of Whittaker on each one of these claims, they're  
19 directed to go to damages. You should verify that that's  
12:42PM 20 correct, but that's my understanding.

21 That, then, does lead to the possibility that they  
22 could find no liability under these four claims and yet still  
23 provide Santa Clarita Valley Water Agency with damages  
24 consistent with Mr. Blum's argument.

12:42PM 25 Now, I have added directions in damages which was

1 not provided by the parties. So what happens if they answered  
2 no, for example, to all of the liability questions but,  
3 nonetheless, awarded damages in what is now paragraph 21?

4 Assuming the parties agree with the prospect of no  
12:43PM 5 liability to the claims but a damage award consistent with  
6 Mr. Blum's argument, then it seems to me that the jury would  
7 only go on beyond paragraph 21, the first damage question if  
8 they answered "yes" to one of the liability questions. And  
9 check the Court, but I believe the liability questions would  
12:44PM 10 require a "yes" answer to either 2, 6, 13, or 20.

11 And again, I'm going to give the parties an  
12 opportunity to reflect more carefully on this form.

13 So, then, if -- if they answered "no" -- and maybe  
14 we should add this -- they should essentially sign the form if  
12:45PM 15 they answered "no" to 2, 6, 13, and 20 at that point because  
16 then there would be nothing further for them to answer. But  
17 I'll want to hear from you on that.

18 But if they answered yes, then they're going to have  
19 to go on and make determinations about whether the water agency  
12:45PM 20 made reasonable efforts to avoid damages. And if they answered  
21 "no" to that question, then they have to go on to 23 to provide  
22 a percentage. But if they answered "yes" to that question,  
23 then they're going to have to go to the negligence questions  
24 but only if they found negligence in response to Question 2.

12:46PM 25 But if they answered "yes" to 22 but "no" to

1 Question 2, which is the negligence claim, then presumably they  
2 don't need to answer the questions about -- let's see -- yes.  
3 If they answered "yes" to that question, you made reasonable  
4 efforts, but they answered "no" to Question 2, no negligence  
12:47PM 5 liability, then they would not need to answer Questions 23, 24,  
6 and 25 which relate to the negligence claim. And then they  
7 would only answer or go to punitive damages, which begins in  
8 26, if they found liability on the trespass and nuisance  
9 claims, if they found no liability on the negligence.

12:47PM 10 And I think you get the point by now. And this is  
11 convoluted, but I think we have to give them direction on this.

12 So unless you have any questions, I am going to take  
13 a break so that you can more carefully work through this, as  
14 the parties have done a lot of work and I -- I certainly don't  
12:48PM 15 want to find everyone in a situation where we have a defective  
16 special verdict form and ultimately we have to go and do this  
17 again.

18 Mr. Blum?

19 MR. BLUM: Your Honor, I have a question and a --  
12:48PM 20 I'm sorry -- a question and a clarification. The actual  
21 question the jury asked only related to the numbering as it  
22 relates to evidence per se; am I correct?

23 THE COURT: I'll read it.

24 MR. BLUM: Thank you, sir.

12:48PM 25 THE COURT: And I'll have Mr. Cruz give you a copy

1 of this.

2 So, first of all, this is going to be marked as  
3 Juror Question No. 1. And it states: "Why are No. 21, No. 22,  
4 and No. 23 missing from the verdict form?" That's all they  
5 say.

12:48PM

6 So from their perspective, they have an unpaginated  
7 verdict form and they don't have those questions. So very  
8 prudently on their part, they want to know if they're missing a  
9 page. That's my interpretation. That's it. That's all  
10 they've done.

12:49PM

11 MR. BLUM: And, Your Honor, you asked me a question  
12 last night, which, frankly, I wasn't in the best of  
13 intellectual positions to answer that. Now I have a much more  
14 clarified question. How they could come to the judgment that I  
15 suggested to the jury? And the correct answer is the public  
16 nuisance claim. They can easily find that even though we were  
17 negligent and all of the other issues we dealt with, that there  
18 was a public nuisance and that the only damage goes to  
19 perchlorate because perchlorate is above the MCL. That's how  
20 they get there within the framework of the special verdict  
21 form. And I will admit, candidly, that that's what I should  
22 have told them.

12:49PM

12:49PM

23 THE COURT: I think it would -- and I appreciate  
24 that, Mr. Blum, but I think it would require a level of ability  
25 that no one could be expected to discern, including the Court.

12:50PM

1 That's not what -- that would not have been my takeaway. That  
2 is to say that if I, for example -- and I don't suggest this is  
3 how I would come out -- but if I were to conclude that you were  
4 correct with regard to a number of your arguments, including  
12:50PM 5 the issue of property interest, I might conclude that there's  
6 been no showing of liability but Mr. Blum has told me that the  
7 water agency is entitled to \$3.1 million and I would be  
8 confused.

9 MR. BLUM: Okay. Your Honor, I'm not -- my -- I  
12:51PM 10 understand the Court's comments, and I just wanted to clarify.  
11 It actually hit me at 3:00 o'clock this morning. I woke up and  
12 said, oh, yeah, that's what I should have said.

13 THE COURT: All right. And I'm suggesting that if  
14 the parties believe that there is a further modification that  
12:51PM 15 needs to be made to the special verdict form, you ought to let  
16 the Court know. I have suggested a way out of what I view a  
17 problem or a potential problem by doing what I have now done,  
18 which is they would be required to answer that damages question  
19 even in the absence of demonstrating liability.

12:51PM 20 And the way that I would interpret it is that  
21 Whittaker essentially has conceded that if they put that  
22 \$3.1 million in there, that they have conceded that that would  
23 be a valid verdict. And if the parties are telling me  
24 something differently, this would be a good time not only to  
12:52PM 25 tell me but tell me what you're requesting, if it's something



1 different, and how I implement it.

2 So with that, unless there's any question for  
3 clarification, I will give you time to digest this and look  
4 through it carefully, which I -- if you're anything like me, I  
12:52PM 5 need some time generally to work through these if this, then  
6 that's.

7 So hearing nothing, Mr. Richard, do you have any  
8 clarification questions?

9 MR. RICHARD: I'll reserve until I've read through  
12:52PM 10 the if this, then what.

11 THE COURT: Okay. Very well.

12 So we'll be in recess. I'm not going to specify a  
13 time. Take the time that you reasonably need, have a  
14 discussion about it, and let Mr. Cruz know when you're ready.

12:52PM 15 (Pause in the proceedings.)

16 THE COURT: Back on the record. This is just for  
17 clarification. Mr. Cruz reminded me that there was a Question  
18 No. 1 yesterday. So this is actually Question No. 2. I didn't  
19 speak with counsel about this question, and I'm sure you'll  
12:53PM 20 understand why, is they asked in writing: "What is the  
21 schedule for tomorrow start time?" And I wrote back "8:30."  
22 And I didn't think that I needed to consult with counsel as to  
23 what time they were being reminded to come back.

24 So in any event, Question 2 is the question now  
12:53PM 25 about the special verdict form.

1 So with that, we're in recess.

2 (Break taken from 12:53 p.m. to 1:43 p.m.)

3 (Out of the presence of the jury:)

01:43PM

4 THE COURT: We're back on the record in the trial  
5 matter outside the presence of the jury.

6 I did review what the parties have suggested, and  
7 I'm not sure that it is correct. That is, if you look at --  
8 under Question 21, what the directions say, as it says, "Go to  
9 Question 22 if you answered 'yes' to Question 2, 6, 13, or 20."

01:44PM

10 Now, that would suggest that even if they've answered "no" to  
11 negligence but "yes" to anything else, they would answer the  
12 negligence questions.

13 That is why, even though it was more convoluted, the  
14 Court went about it as I did.

01:44PM

15 So, Ms. Scott, do you want to address this or  
16 Mr. Richard or someone?

17 MR. RICHARD: Yes, Your Honor.

18 The first question is whether questions -- what are  
19 now 22 and 23, the two mitigation questions, should be part of  
20 the special verdict since the jury was not instructed on  
21 failure to mitigate.

01:44PM

22 So if those questions are out --

23 THE COURT: And it appears they should be out.

24 MR. RICHARD: Right. Otherwise, this jury has no  
25 guidance on what it means by failure to mitigate. But --

01:45PM

1 defense counsel disagrees, but if I could just finish my other  
2 point.

3 THE COURT: Yes.

4 MR. RICHARD: So if that's true, then I think -- go  
01:45PM 5 to Question 22 if you answered "yes" to Question 2, which would  
6 be the negligence question. And then if you answered -- I'm  
7 just trying to see -- yeah. Then I think it would be if you  
8 answered, I guess, "no" to Questions 2, 6, 13 -- so the  
9 question is if they answered "yes" to 16 -- to 6, 13, or 20,  
01:45PM 10 then they should be directed to go to Question 26 is how I  
11 would read it.

12 THE COURT: Yes. That's -- that was, I think, the  
13 formulation, essentially, that the Court used that was changed.

14 MR. RICHARD: Right. We didn't catch that as we  
01:45PM 15 were talking about mitigation. But Mr. Blum doesn't agree with  
16 our -- well, he agrees that the jury was not instructed on  
17 failure to mitigate, but I won't speak for him beyond that.

18 THE COURT: All right. I thought this was presented  
19 to the Court jointly.

01:46PM 20 MR. RICHARD: Just the first sentence, just the --

21 THE COURT: All right. Let me hear Mr. Blum with  
22 regard to the issue of mitigation.

23 And refresh the Court's recollection. At some point  
24 did Whittaker withdraw in any way a claim of mitigation?

01:46PM 25 MR. BLUM: I was shown an e-mail about ten minutes

1 ago where we did withdraw that instruction, Your Honor. But  
2 clearly, the parties intended or believed there was a  
3 mitigation instruction. That's why it was in the special  
4 verdict form.

01:46PM

5 THE COURT: Well, that doesn't necessarily follow  
6 right. It could follow the other way around, that it shouldn't  
7 have been included in the special verdict form because it had  
8 been withdrawn.

01:47PM

9 But when did you withdraw the mitigation jury  
10 instruction?

11 MR. BLUM: It was the -- I think it was July 23  
12 of -- I assume it's this year.

13 THE COURT: All right. And when did you present the  
14 Court with this special verdict form that contained it?

01:47PM

15 MR. BLUM: Afterwards. I don't know -- I don't know  
16 the dates, Your Honor, but I do know it was afterward.

17 THE COURT: But isn't Mr. Richard correct, if I  
18 didn't instruct them on mitigation, how can I have them answer  
19 a mitigation question?

01:47PM

20 MR. BLUM: Because you can bring them in right now  
21 and give them 3930. It's not unheard of to add instructions in  
22 the middle of deliberations.

23 THE COURT: It's not unheard of, but it's not the  
24 best way to go. And --

01:47PM

25 MR. BLUM: I agree on that, Your Honor. I'm not

1 disagreeing on that. But the parties argued about whether or  
2 not there was mitigation. I don't know if we used the exact  
3 words or not. But the whole argument on what they were doing  
4 in terms of the turnouts and things of that sort were  
01:47PM 5 mitigation issues.

6 The directed verdict form we submitted to you after,  
7 apparently, the e-mail. And, Your Honor, I don't know the  
8 whole e-mail traffic. I know at that point instructions were  
9 going in and out frequently. So I don't know ultimately what  
01:48PM 10 happened.

11 And mitigation is a standard instruction,  
12 Your Honor. This is -- it's not like we're talking about some  
13 strange instruction that most people don't use.

14 THE COURT: That's really not the point of it. The  
01:48PM 15 point of it is: Did you withdraw these instructions, in  
16 effect, withdrawing a claim for mitigation?

17 MR. BLUM: Your Honor, I saw the e-mail. I do not  
18 know what happened afterwards. I honestly wasn't directly  
19 involved in the negotiations dealing with mitigation. But if  
01:48PM 20 you give us a second, I think Mr. Trowbridge has something on  
21 the issue he wants to tell me.

22 (Off-the-record discussion between counsel.)

23 MR. BLUM: Your Honor, that's right. We re-raised  
24 it, and you allowed us to add it on the MIL where you -- that's  
01:49PM 25 what Mr. Trowbridge told me, that -- what happened was now you

1 originally on the summary judgment ruled that we had not shown  
2 sufficient evidence to go forward with the -- with the  
3 affirmative defense of mitigation. And you struck it with  
4 giving us the option of adding it in if we could show a legal  
01:49PM 5 basis. Then we filed one of our MILs to ask to add it back in,  
6 and you granted that MIL.

7 THE COURT: All right. Mr. Richard, do you have any  
8 contrary information?

9 MR. RICHARD: All I know is, Your Honor, that this  
01:49PM 10 instruction was not submitted to the jury. And it would be  
11 highly prejudicial to bring them out to read a single  
12 instruction on mitigation of damages.

13 What the parties argued to the jury is still  
14 relevant on the comparative fault and the percentage of fault.

01:50PM 15 But I think to call the jury back and instruct on  
16 one issue, the undue emphasis on failure to mitigate when -- I  
17 think it was just yesterday Your Honor asked both sides are the  
18 jury instructions set, and we each said yes. So --

19 THE COURT: Well, how is it prejudicial if I simply  
01:50PM 20 tell the jury that it was an inadvertent omission and they  
21 shouldn't place any undue emphasis on it? And I could easily  
22 explain that they will see that it's part of the special  
23 verdict form, but it was inadvertently omitted from the  
24 instruction set? Because I'm going to have to do this one way  
01:50PM 25 or the other.

1           Either I'm essentially having the defense withdraw  
2     its mitigation defense or I am going to simply go the other  
3     way. And it seems to me going the other way, based upon  
4     prejudice that you're claiming, is wrong.

01:51PM

5           MR. RICHARD: To add an instruction after closing  
6     argument when the issue was comparative fault -- so I will  
7     stand on our objection because I don't think there is evidence  
8     of a failure to mitigate our damages. I don't see how that was  
9     possibly argued.

01:51PM

10           The instructions were submitted weeks and weeks ago,  
11     and I -- there was never a suggestion that we'd like to add  
12     back in an instruction on failure to mitigate.

01:51PM

13           So they argued comparative fault. I don't think the  
14     evidence supports that whatsoever. But I'll just -- I  
15     understand Your Honor's -- you know --

16           THE COURT: Well, let me ask this as a matter of  
17     potential compromise. Would the parties agree that we'll leave  
18     it in the special verdict form but I won't instruct?

19           Off the record, you can consult.

01:52PM

20           (Off-the-record discussion among counsel.)

21           MR. RICHARD: Just a minute, Your Honor.

22           THE COURT: Yes.

23           (Pause in the proceedings.)

24           THE COURT: The Court's going to recess again.

01:53PM

25     You're going to have until 2:05 to provide the Court with an

1 answer to whether you're agreeing or not agreeing to the  
2 Court's proposed compromise. If there's no agreement,  
3 Whittaker is to provide the Court with the instruction that  
4 you're requesting, which doesn't necessarily mean I'm going to  
01:54PM 5 give it. It just means that, if I'm going to give it, I'm  
6 going to want to have it so that this matter is not further  
7 delayed.

8 And the parties are ordered to provide the Court  
9 with a joint verdict form that is agreed upon, except  
01:54PM 10 potentially for this issue of mitigation.

11 So with that, we're in recess for ten minutes.

12 (Break taken from 1:54 p.m. to 2:16 p.m.)

13 (Out of the presence of the jury:)

14 THE COURT: We are back on the record in the trial  
02:16PM 15 matter with all present who were previously present. We're  
16 outside the presence of the jury.

17 I did receive what I understand to be a joint  
18 revised verdict form.

19 So let me hear from plaintiff's counsel about where  
02:16PM 20 we are, please.

21 MR. RICHARD: Yes, Your Honor.

22 So the parties discussed the choice presented by the  
23 Court -- or the thought and have agreed that leaving the two  
24 questions in without bringing the jury in to read a separate  
02:17PM 25 instruction makes the most sense under these circumstances.



1 THE COURT: And otherwise, this is an agreed special  
2 verdict form? When I say "otherwise," it is an agreed special  
3 verdict form?

4 MR. RICHARD: Exactly. Yes, Your Honor.

02:17PM

5 THE COURT: All right. Mr. Blum?

6 MR. BLUM: Yes, Your Honor. But I wanted to make  
7 one thing clear. On the issue -- I think it's Question 22,  
8 their damages. Any consent that the defendant have -- it's not  
9 to an unlimited amount of damage. It was to a specific amount.

02:17PM

10 THE COURT: Understood.

11 MR. BLUM: Okay.

12 THE COURT: All right. So what the Court is going  
13 to do is I'm having this document finalized. The only addition  
14 that's going to be made is a formatting one, which is to  
15 paginate the document. Other than that, I'm going to leave it  
16 as it is.

02:18PM

17 Some of the wording is a little bit different, I  
18 think, but I'm not going to fuss with that, that is, some of  
19 the formulation of the wording and the like is a little  
20 different. But at this point, I think the jury is interested  
21 in getting this form.

02:18PM

22 So I'm just going to finalize it. I'm going to have  
23 Mr. Cruz print one copy out or whatever you need for each side  
24 for you to simply quickly peruse it to see that all I have done  
25 is edited the pagination but, otherwise, have properly

02:18PM

1 finalized the document that has been agreed upon.

2 Once you have told him that, it will be submitted to  
3 the jury.

4 What I would ask that you do is that you sign -- I'd  
02:18PM 5 like, Mr. Richard, your initials on the verdict form that will  
6 go to the jury, as well as yours, Mr. Blum. And it simply  
7 should be at the very end of the document on the back page of  
8 the document so that we'll have a record that reflects the  
9 chain of custody, so to speak.

02:19PM 10 MR. BLUM: Just the initials, Your Honor?

11 THE COURT: Just your initials.

12 MR. BLUM: All right.

13 THE COURT: All right. Thank you. We're in recess.

14 (Break taken from 2:19 p.m. to 2:30 p.m.)

02:30PM 15 (Out of the presence of the jury:)

16 THE COURT: We are back on the record in the  
17 presence of counsel, outside the presence of the jury.

18 And I am going to bring the jury in to explain to  
19 them what has been done, since it is possible that they have  
02:30PM 20 actually completed a part of the form. And I think they need  
21 to know that I've done more than simply renumbered the special  
22 verdict form.

23 So with that, let's go ahead and bring in the jury.

24 It will take just a minute, so you can remain seated  
02:31PM 25 if you would like.

1 Off the record.

2 (Off-the-record discussion.)

3 (In the presence of the jury:)

02:33PM 4 THE COURT: We are still on the record now in the  
5 presence of the jury.

6 First of all, good afternoon, ladies and gentlemen.

7 THE JURY: Good afternoon.

02:34PM 8 THE COURT: And let me start with an apology and an  
9 expression of thanks and appreciation. The apology is we have  
10 been somewhat delayed in getting the special verdict form to  
11 you. And I do appreciate your patience.

12 I also appreciate your diligence in this matter.  
13 You did point out to the Court that there were some missing  
14 numbers, and that had the Court go back to the verdict form to  
02:34PM 15 make sure that I hadn't overlooked any other potential problem.

16 So the missing numbers was simply a matter of a  
17 failure to properly number. However, by your good work in  
18 bringing that to my attention, I took a further look at the  
19 entire verdict form, including the part regarding damages. And  
02:34PM 20 I noticed that at that part of the special verdict form, the  
21 form neglected to give you direction, proper direction about  
22 what you do depending upon what your responses were.

23 It did it in part, but it didn't do it in whole and  
24 it didn't do it entirely correctly. And for that, the Court  
02:35PM 25 does apologize. But that's the reason for the delay.

1           So the reason I'm also having you out here and  
2     explaining this to you is that you do need to make sure that  
3     you're reading through very carefully the special verdict form.  
4     Where I made the changes was limited to the portion that begins  
02:35PM 5     with damages.

6           And I'll just confirm that with both counsel,  
7     starting with the plaintiff, Mr. Richard.

8           MR. RICHARD: Yes, Your Honor. That is correct.  
9     Thank you.

02:35PM 10           THE COURT: Mr. Blum.

11           MR. BLUM: We agree, Your Honor.

12           THE COURT: All right. And so no other changes were  
13     made to the directions and the like prior to the point where it  
14     says "Damages," which is the part I think that was probably --  
02:36PM 15     we had the numbering error.

16           So is that clear to everyone?

17           THE JURY: Yes.

18           THE COURT: All right. Well, again, I greatly thank  
19     you for your diligence and your patience. And we will be  
02:36PM 20     providing you with the corrected special verdict form --

21           You have it?

22           THE COURTROOM DEPUTY: Yes.

23           THE COURT: All right. And I also had -- you'll see  
24     there's some initials on there. They're counsel's initials --  
02:36PM 25     they're counsel's initials because I wanted to make sure that

1 we had what now was the agreed-upon special verdict form with  
2 the directions, just as you saw me do here in open court.

3 All right. Thanks again, everyone. You may now  
4 retire for further deliberations.

02:36PM 5 THE COURTROOM DEPUTY: All rise for the jury.

6 (Out of the presence of the jury:)

7 THE COURT: Please be seated.

8 And we remain on the record outside the presence of  
9 the jury.

02:37PM 10 And so what I was just about to state while we were  
11 off the record and I'll just now state it on the record is that  
12 the parties do need to be prepared for the potential second  
13 phase on Monday morning.

14 So, of course, the Court has no idea what the jury  
02:37PM 15 is going to do. But in the event that there is the necessity  
16 for a second phase, the Court intends to go right into that  
17 second phase.

18 Mr. Richard.

19 MR. RICHARD: Yes, Your Honor.

02:37PM 20 And again, not prejudging anything but just to be  
21 ready, we -- there are two things. Mr. Lardiere, I believe, is  
22 still under subpoena, and he would be our witness. And, two,  
23 defendants had agreed to produce certain financial information  
24 and have it in court and available.

02:38PM 25 And I've spoken to Mr. Blum, and I think he was

1 going to check on that. And I may have gotten an e-mail in the  
2 last hour. But -- so those are the two things that we should  
3 try to button down today from defendants, Mr. Lardiere being  
4 available and the items in the subpoena. And I have the order  
02:38PM 5 where that's set out from the magistrate. It should be  
6 available. And typically the Court would confirm, yes, I have  
7 an envelope with that information.

8 THE COURT: All right. And is that the entirety of  
9 your evidence, which will be introduced through Mr. Lardiere?

02:38PM 10 MR. RICHARD: I believe so. I'll think about  
11 Your Honor's question, whether we need an accountant. We would  
12 request to see the information if there is that finding.  
13 Hopefully we could get the information today and have the  
14 weekend to look at it.

02:39PM 15 THE COURT: And what is your estimate as to the  
16 length of the presentation of that evidence?

17 MR. RICHARD: Typically, it's taken me an hour to an  
18 hour and a half, Your Honor.

19 THE COURT: All right. Mr. Blum?

02:39PM 20 MR. BLUM: One moment.

21 Your Honor, I don't -- we will be able to give him  
22 the information by the end of the day, the documents requested.  
23 We have them available, just not right -- in my possession  
24 right now.

02:39PM 25 THE COURT: Understood. All right.

1 Well, we'll be in recess. And once again, counsel  
2 should stand by, as you have been doing. Thank you.

3 MR. RICHARD: Thank you, Your Honor.

4 (Break taken from 2:39 to 3:21 p.m.)

03:21PM

5 (In the presence of the jury:)

6 THE COURT: We are on the record in Santa Clarita  
7 Valley Water Agency versus Whittaker Corporation with all  
8 counsel present, and we are also joined by the jury.

03:23PM

9 The Court did receive a note indicating that the  
10 jury has reached a unanimous verdict.

11 And Juror No. 2, I understand you are the  
12 foreperson?

13 JUROR NO. 2: I am, Your Honor.

03:23PM

14 THE COURT: And is that correct, that the jury has,  
15 indeed, reached a unanimous verdict in this case?

16 JUROR NO. 2: That is correct.

17 THE COURT: If you would kindly hand the verdict  
18 form in the folder to the bailiff who will provide that to my  
19 courtroom deputy.

03:24PM

20 (Pause in the proceedings.)

21 THE COURT: I have reviewed the verdict form or have  
22 received the verdict form and am in the process of reviewing  
23 it.

03:25PM

24 I have reviewed the verdict form which appears to be  
25 in order. I am going to hand it to my courtroom deputy, and he

1 will read the verdict as it will be recorded.

2 THE COURTROOM DEPUTY: The United States District  
3 Court, Central District of California, Santa Clarita Valley  
4 Water Agency, plaintiff, versus Whittaker Corporation,  
03:25PM 5 defendant.

6 Verdict form.

7 We answer the questions submitted to us as follows:  
8 Negligence. Fault of plaintiff and others at issue.  
9 Number 1. Was Whittaker Corporation negligent?

03:26PM 10 Jury's checked off "Yes."

11 Question 2. Was Whittaker Corporation's negligence  
12 a substantial factor in causing harm to Santa Clarita Valley  
13 Water Agency?

14 Jury's checked off "Yes."

03:26PM 15 Trespass.

16 Question 3. Did Santa Clarita Valley Water Agency  
17 own, lease, occupy, or control the property?

18 The jury has checked off "Yes."

19 Question 4. Did Whittaker Corporation intentionally  
03:26PM 20 cause TCE, PCE, and/or perchlorate to enter Santa Clarita  
21 Valley Water Agency's property or did Whittaker Corporation,  
22 although not intending to do so, recklessly or negligently  
23 cause TCE, PCE, and/or perchlorate to enter Santa Clarita  
24 Valley Water Agency's property?

03:27PM 25 And the jury's checked off "Yes."



1 Question 5. Did Whittaker Corporation enter the  
2 property without Santa Clarita Valley Water Agency's  
3 permission?

4 The jury has checked off "Yes."

03:27PM

5 Question 6. Was Whittaker Corporation's conduct a  
6 substantial factor in causing actual harm to Santa Clarita  
7 Valley Water Agency?

8 The jury's checked off "Yes."

03:27PM

9 Question 7. Did Santa Clarita -- did Whittaker  
10 Corporation, by acting or failing to act, create a condition  
11 that was harmful to health?

12 The jury's checked off "Yes."

13 Question 8. Did the condition affect a substantial  
14 number of people at the same time?

03:27PM

15 The jury's checked off "Yes."

16 Question 9. Would an ordinary person have been  
17 reasonably annoyed or disturbed by the condition?

18 The jury's checked off "Yes."

03:28PM

19 Question 10. Did the seriousness of the harm  
20 outweigh the social utility of Whittaker Corporation's conduct?

21 And the jury has checked off "Yes."

22 Question 11. Did Santa Clarita Valley Water Agency  
23 consent to Whittaker Corporation's conduct?

24 The jury has checked off "No."

03:28PM

25 Question 12. Did Santa Clarita Valley Water Agency

1 suffer harm that was different from the type of harm suffered  
2 by the general public?

3 And the jury's checked off "Yes."

4 Question 13. Was Whittaker Corporation --

03:28PM 5 Corporation's conduct a substantial factor in causing  
6 Santa Clarita Valley Water Agency harm?

7 The jury's checked off "Yes."

8 Question 14. Did Santa Clarita Valley Water Agency  
9 own, lease, occupy, or control the property?

03:29PM 10 The jury checked off "Yes."

11 Question 15. Did Whittaker Corporation, by acting  
12 or failing to act, create a condition or permit a condition to  
13 exist that was harmful to health?

14 And the jury's checked off "Yes."

03:29PM 15 Question 16. Did this condition substantially  
16 interfere with Santa Clarita Valley Water Agency's use or  
17 enjoyment of its land?

18 And the jury has checked off "Yes."

19 Question 17. Would an ordinary person have  
03:29PM 20 reasonably been annoyed or disturbed by Whittaker Corporation's  
21 conduct?

22 And the jury has checked off "Yes."

23 Question 18. Did Santa Clarita Valley Water Agency  
24 consent to Whittaker Corporation's conduct?

03:29PM 25 The jury has checked off "No."

1 Question 19. Was Whittaker Corporation's conduct a  
2 substantial factor in causing harm to Santa Clarita Valley  
3 Water Agency?

4 The jury has checked off "Yes."

03:30PM

5 Question 20. Did the seriousness of the harm  
6 outweigh the public benefit of Whittaker Corporation's conduct?

7 And the jury has checked off "Yes."

8 Damages.

03:30PM

9 Question 21. What are Santa Clarita Water Agency's  
10 damages?

11 Past damages: \$7 million.

12 Reasonable restoration or repair cost:

13 \$68.3 million.

03:30PM

14 Question 22. Did Santa Clarita Water Agency make  
15 reasonable efforts to avoid its damages?

16 And the jury has checked off "No."

17 Question 23. What percentage of Santa Clarita Water  
18 Agency's damages were caused by its failure to mitigate its  
19 damages?

03:31PM

20 The jury marked: 10 percent.

21 Question 24. On the negligence claim, was the  
22 conduct of Santa Clarita Valley Water Agency or Saugus  
23 Industrial Center a substantial factor in causing damages to  
24 Santa Clarita Water -- Santa Clarita Valley Water Agency?

03:31PM

25 And the jury has checked off "Yes."

1 Question 25. State for each entity the percentage  
2 of fault on the negligence claim that is attributable to each.

3 For SCVWA, the jury has checked off: 10 percent.

4 For Whittaker, the jury's marked: 60 percent.

03:31PM 5 And for SIC, the jury has checked: 30 percent.

6 Punitive damages.

7 Did Whittaker engage in the conduct with malice,  
8 oppression, or fraud?

9 The jury has checked off "No."

03:32PM 10 This is signed and dated this day by the jury  
11 foreperson, Your Honor.

12 THE COURT: Let's go ahead and individually poll the  
13 jury.

14 And let me tell you what that means, members of the  
03:32PM 15 jury -- and I do this in every case -- which is Mr. Cruz is  
16 going to ask each one of you individually, beginning with  
17 Juror No. 1, then 2, et cetera, whether the verdict as Mr. Cruz  
18 has just now fully read it is, in fact, your own verdict.

19 So with that, if you would please individually poll.

03:32PM 20 THE COURTROOM DEPUTY: Yes, Your Honor.

21 Juror No. 1, is this your verdict as presented and  
22 read?

23 JUROR NO. 1: Yes.

24 THE COURTROOM DEPUTY: Juror No. 2, is this your  
03:32PM 25 verdict as presented and read?

1 JUROR NO. 2: Yes.

2 THE COURTROOM DEPUTY: Juror No. 3, is this your  
3 verdict as presented and read?

4 JUROR NO. 3: Yes.

03:32PM

5 THE COURTROOM DEPUTY: Juror No. 4, is this your  
6 verdict as presented and read?

7 JUROR NO. 4: Yes.

8 THE COURTROOM DEPUTY: Juror No. 5, is this your  
9 verdict as presented and read?

03:32PM

10 JUROR NO. 5: Yes.

11 THE COURTROOM DEPUTY: Juror No. 6, is this your  
12 verdict as presented and read?

13 JUROR NO. 6: Yes.

14 THE COURTROOM DEPUTY: Juror No. 8, is this your  
15 verdict as presented and read?

03:33PM

16 JUROR NO. 8: Yes.

17 THE COURTROOM DEPUTY: And, Juror No. 9, is this  
18 your verdict as presented and read?

19 JUROR NO. 9: Yes.

03:33PM

20 THE COURT: Thank you.

21 And the record will reflect that the verdict as read  
22 was, in fact, unanimous.

23 And, members of the jury, you have now completed  
24 your jury service in this matter. Let me tell you a couple of  
03:33PM 25 logistical things.

1 First of all, you are now free to speak to whomever  
2 you would like about this case. So if you wanted to speak to  
3 the lawyers or anyone else about the case, you're free to do  
4 so. But it's also your right to decline to speak with people  
03:33PM 5 if you prefer not to speak to somebody. That's your decision,  
6 your right.

7 All I would tell you is if you do elect to speak,  
8 whether it's to the lawyers or anyone else about this matter,  
9 just remember that you should try to conduct yourself when you  
03:33PM 10 speak with whomever you speak with a certain level of formality  
11 that reflects the seriousness of these proceedings and respects  
12 also the process that you went through during jury  
13 deliberations.

14 I believe that you do not need to go down to the  
03:34PM 15 jury assembly room because you'll get whatever certificates and  
16 the like that you need to get by mail. But Mr. Cruz will give  
17 you further direction on that.

18 It has been a pleasure serving with you on this  
19 case.

03:34PM 20 Let me make an observation that I think you all have  
21 merited, which is that this has been a case that's gone on for  
22 some time and it's been very technical. And it was pretty  
23 clear to me that you all paid careful attention, probably more  
24 so, in my experience, certainly of a case like this and of this  
03:34PM 25 length than I have seen in the many years that I have seen

1 jurors presiding over matters.

2 So I want to thank you, and I know that all counsel  
3 thank you for your participation. And with that, you have  
4 completed your jury service with my great thanks and  
03:35PM 5 appreciation, as well as my staff's thanks and appreciation.

6 Have a wonderful weekend, and thank you all for your  
7 service.

8 THE COURTROOM DEPUTY: All rise for the jury,  
9 please.

03:35PM 10 (Out of the presence of the jury:)

11 THE COURT: We're outside the presence of the jury.

12 And I'm going to have the plaintiff provide the  
13 Court with a judgment within seven days of today, so by  
14 December 10th. And you are to provide that to the other side  
03:36PM 15 in order to have them approve it as to form.

16 I realize there are still outstanding issues for the  
17 Court to address, including the JMOL. I haven't forgotten  
18 that, but I do want to get the form of judgment.

19 So the Court also does need to address the issues of  
03:36PM 20 the bench trial. And I do want to get the parties' input on  
21 what remains outstanding and what further process that you are  
22 requesting. I don't mean to suggest that I'm going to give you  
23 carte blanche with process. I've given the parties in this  
24 case quite a bit of process. But I am at least certainly open  
03:37PM 25 to seeing what input you think remains, whether it's for the

1 JMOL or whether it's with respect to the bench trial.

2 I know we did discuss a number of potential areas  
3 for briefing. I don't have them all memorized but about the  
4 orphan issue and the like.

03:37PM

5 So unless there's anything further for us to  
6 accomplish today, all I'm going to do is require the parties to  
7 submit to the Court a joint document by Monday that reflects  
8 what remaining process you think is due or that you're  
9 requesting.

03:37PM

10 And I will tell you, it is my intention to have  
11 continuity in this case, which means that, although I have no  
12 doubt that all counsel are quite tired, the Court does not  
13 intend, after devoting the amount of resources it has to this  
14 matter, to allow much, if any, time to pass where I'm going to  
15 have to attempt to revisit much of what I already now have in  
16 mind.

03:38PM

17 So counsel should be mindful that you are still in  
18 trial, and you are still at the Court's beck and call,  
19 essentially. I don't mean to make it sound as pedestrian as  
20 that, but you get the point. And that means that if I need to  
21 have you come here, I will.

03:38PM

22 And let me tell you what I was contemplating and the  
23 reason I'm not going to be doing this, Mr. Blum -- although, if  
24 you would prefer that I do it, I probably would. I was  
25 contemplating having the parties come back on Monday morning,

03:38PM



1 but I realize that you're coming from Northern California, I  
2 believe.

3 MR. BLUM: Yes, sir.

03:39PM 4 THE COURT: And my strong suspicion is that you  
5 would prefer not to come here on Monday morning to try to have  
6 a discussion about what other things remain and the like but,  
7 rather, would like to go home, spend the weekend at home, spend  
8 Monday at home. And I'm willing to allow for that, with the  
9 understanding, if I need you here on Tuesday, you're going to  
03:39PM 10 have to come here on Tuesday. Is that agreeable?

11 MR. BLUM: Your Honor, I'm -- the words you used, I  
12 am at your beck and call and I understand that.

13 THE COURT: But more -- I guess as -- as  
14 significantly, have I assumed correctly?

03:39PM 15 MR. BLUM: Yes, sir.

16 THE COURT: All right. So unless there's anything  
17 further, I will look to receive something from counsel. And I  
18 am going to want it by noon on Monday. The reason is I'm going  
19 to need -- the earlier, the better. I'm going to need some  
03:40PM 20 time to look at what you have provided to the Court,  
21 contemplate it, and then give you further direction as to  
22 whether you need to be here on Tuesday or Wednesday or what  
23 have you or not.

24 But I am in -- instead of having you here to have  
03:40PM 25 this discussion or to do it this afternoon, which I'm certain

1 nobody wants to do that, that's how I intend to proceed.

2 Is there anything further that we need to address  
3 here for the plaintiff this afternoon?

03:40PM 4 MR. RICHARD: Just to say thank you to Your Honor  
5 and Your Honor's staff. We all see how hard you all work and  
6 appreciate it.

7 THE COURT: Thank you.

8 Anything further, Mr. Blum?

03:40PM 9 MR. BLUM: We have the same feelings, Your Honor.  
10 And I can't say enough about how good your staff is.

11 THE COURT: With that, we all agree.

12 Well, have a very nice weekend. And I look forward  
13 to further discussions about the remaining issues in the case.  
14 Thank you.

03:40PM 15 (Proceedings concluded at 3:40 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

COUNTY OF LOS ANGELES )  
 )  
STATE OF CALIFORNIA )

DATED THIS 4TH DAY OF DECEMBER, 2021.

MYRA L. PONCE, CSR NO. 11544, CRR, RDR  
FEDERAL OFFICIAL COURT REPORTER

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